IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1152 OF 2004

Shri Chindhu Dagadu Talkar ..Appellant

versus

Shri Shankar Mahadeo Talkar & Ors. ..Respondents

Mr.R.L.Majgaonkar for appellant

Mr.P.S.Dani for Respondent Nos.1A and 2.

CORAM : P.V.KAKADE, J.

DATE : 20TH OCTOBER, 2004

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. This is an appeal filed by the unsuccessful plaintiff against the judgment and order dated 29.10.1999 passed by District Judge, Raigad, Alibag allowing the appeal of the defendant and reversing the

judgment and order passed by Civil Judge, Junior Division, Roha in Regular Civil Suit No.21 of 1993 wherein the suit of the plaintiff - appellant for perpetual injunction simplicitor was decreed.

3. The plaintiff came with the case that 1st defendant happens to be his cousin and 2nd defendant is aunt. One Mahadeo Babaji Talkar purchased land Survey No.119/1(a) of the area admeausring 0.56-25 Are of village Pugaon, Tal. Roha from one Govind Ramji Talkar, as Karta of joint family. There was partition of the said land between his father and father of the defendant in which 0.28-0 Ares came to the share of his father which was then recorded as S.No.119B and now Gat No.482 in revenue record. After his father died, the possession according to the plaintiff continued to be with him. He further alleged that in the month of February and March 1993 both the defendants took exception and threatened him, and thereby obstructed peaceful enjoyment of the suit property and therefore he filed suit for perpetual injunction. The defendants challenged the suit denying the allegations made by the plaintiff and sought dismissal of the suit on various grounds. The learned trial judge adjudicated the dispute on merits and came

to the conclusion that the plaintiff had proved his case against the defendants and decree for perpetual injunction came to be passed.

4. An appeal was carried against the said order. The appeal was heard by the District Judge Raigad and it came to be allowed setting aside the judgment of the trial court. Hence the present appeal.

5. At the outset it may be noted that there is no substantial question of law involved in this appeal at all and all the issues involved are the issue of facts pure and simple and therefore, cannot be entertained at this stage. It must also be noted that the plaintiff has prosecuted the suit only on the basis of mutation entry, however, his own witness appears to have stated in quite clear terms that it was the defendant no.1 who was cultivating the suit land. If this was the position, then it cannot be said that the plaintiff was in lawful possession of the suit property on the date of the suit. Perusal of the judgment of the lower appellate court shows that he has properly appreciated the factual aspect of the evidence on record and therefore, it would brook no interference at this stage.

It is well settled legal position that in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In the present case the evidence on record appears to be sufficient to show that the plaintiff was never in possession of the suit property and therefore the suit was rightly dismissed by the lower appellate court. In the result as no merits in the appeal, and therefore stands dismissed in limine. Consequently the civil application also stands dismissed with no order as to costs.